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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

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**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**-against-**

**DOUGLAS F. WHITMAN,**  
**and**  
**WHITMAN CAPITAL LLC,**

**Defendants.**

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**COMPLAINT**

**ECF CASE**

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Douglas F. Whitman (“Whitman”) and Whitman Capital, LLC (“Whitman Capital”) (collectively the “Defendants”), alleges as follows:

**SUMMARY**

1. This case involves insider trading by Whitman and Whitman Capital in the securities of the public companies Polycom, Inc. (“Polycom”) and Google, Inc. (“Google”) based on tips of material nonpublic information that Whitman obtained from an individual investor named Roomy Khan (“Khan”). Trading on the basis of this information, Whitman Capital hedge funds reaped approximately \$980,000 in ill-gotten profits.

2. During 2006 and 2007, Khan provided Whitman with material nonpublic information that she obtained from Sunil Bhalla (“Bhalla”), a senior executive at Polycom, and Shammara Hussain (“Hussain”), an employee at Market Street Partners, an investor relations firm that provided consulting services to Google.

3. In or about January 2006, Bhalla provided Khan with material nonpublic information concerning Polycom’s calculation of its revenues and other financial results for the fourth quarter of 2005 prior to Polycom’s announcement of these quarterly financial results to the public. Khan traded on this material nonpublic information, and also passed it to Whitman, who traded on behalf of Whitman Capital based on the information. As a result, Whitman Capital reaped illicit profits of more than \$360,000.

4. In or about July 2007, Hussain tipped Khan to material nonpublic information concerning Google’s calculation of its earnings for the second quarter of 2007 prior to Google’s announcement of these quarterly results to the public. Khan traded on this material nonpublic information, and also passed it to Whitman. Whitman traded on behalf of Whitman Capital based on the information. As a result, Whitman Capital reaped more than \$620,000 in illicit profits.

5. In addition to tipping Whitman, Khan also passed the material nonpublic information that she obtained concerning Polycom and Google to investment professionals at other hedge fund advisers, including Raj Rajaratnam of Galleon Management LP (“Galleon”), and Jeffrey Yokuty and Robert Feinblatt of Trivium Capital Management LLC (“Trivium”). Like Whitman and Whitman Capital, both Galleon and Trivium used this information to reap sizable profits for the hedge funds they managed.

## **NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT**

6. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78u(d)]. The Commission seeks permanent injunctions against each of the defendants, enjoining them from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint; disgorgement of ill-gotten gains or losses avoided from the unlawful insider trading activity set forth in this Complaint, together with prejudgment interest; and civil penalties pursuant to Section 21(d)(3) and/or Section 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u-1], and Section 20(d) of the Securities Act [5 U.S.C. § 77t(d)]. The Commission also seeks any other relief the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

## **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

8. Venue lies in this Court pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)], and Sections 21(d), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1, and 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within the Southern District of New York. For example, Whitman Capital utilized a New York,

New York-based prime broker for clearing and settling the illegal trading in the securities of Polycom and Google alleged herein. In addition, certain of these illegal trades were executed on exchanges based in New York, New York. For example, certain of Whitman's purchases of Google put option contracts were executed on the New York Stock Exchange in New York, New York, and certain of Khan's purchases of Polycom call option contracts were executed on the American Stock Exchange in New York, New York. Whitman was also physically present in New York, New York when he received material nonpublic information concerning Polycom in early January of 2006.

#### **DEFENDANTS**

9. **Whitman**, age 54, resides in Atherton, California. Whitman is President and Managing Member of Whitman Capital, a hedge fund investment adviser. Whitman has held a Series 7 securities license. Whitman obtained his Bachelor of Science and his Master in Business Administration degrees from New York University.

10. **Whitman Capital**, a California limited liability company, is an unregistered hedge fund investment adviser based in Menlo Park, California, that was registered with the Commission until August 2006. In its last available Commission filing, Whitman Capital reported \$120 million in assets under management.

#### **RELEVANT INDIVIDUALS AND ENTITIES**

11. **Bhalla**, age 55, resides in Fremont, California. Bhalla joined Polycom in February 2000, and was a Senior Vice President and General Manager of the company's Voice Division during the relevant period.

12. **Google** is a Delaware corporation headquartered in Mountain View, California. Google hosts one of the leading internet search engines. Google's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the Nasdaq under the symbol "GOOG."

13. **Hussain**, age 26, resides in Fremont, California. In mid-2007, Hussain worked at Market Street Partners, a consulting firm that provided investor relations services to Google.

14. **Khan**, age 53, resides in Fort Lauderdale, Florida. Khan is an individual investor.

15. **Polycom** is a Delaware corporation headquartered in Pleasanton, California. Polycom produces applications for voice, video, and data networking. Polycom's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the Nasdaq under the symbol "PLCM."

## **FACTS**

### **Insider Trading in Polycom Securities**

16. In or around 2002 or 2003, Khan, an individual investor, met and befriended Bhalla, a senior executive at Polycom. At some point thereafter, Bhalla, believing that Kahn was a successful investor, deposited money into a brokerage account and gave Khan authority to execute trades on Bhalla's behalf. Contrary to Bhalla's expectations, Khan executed a series of unprofitable trades and lost most of the money that Bhalla had placed in the account.

17. In late 2005 and 2006, after Khan had lost the money in Bhalla's account, Bhalla provided Khan with detailed material nonpublic information concerning

Polycom's quarterly earnings with the knowledge that Khan intended to use that inside information to trade in Polycom stock for profit, and with the expectation that Khan would share a portion of Khan's illegal trading profits with Bhalla as payback for the money Khan lost trading in Bhalla's account.

18. In addition to trading on the inside information obtained from Bhalla in Khan's own account, Khan passed this material nonpublic information to Whitman, who was a friend and neighbor of Khan's during the relevant time period. In addition to being friends and neighbors, Khan and Whitman frequently exchanged information and trading strategies concerning the securities of various publicly-traded companies.

19. For example, in or around late December 2005 or early January 2006, Bhalla obtained material nonpublic information concerning Polycom's financial results for its fourth quarter of 2005, which the company was planning to announce to the public on January 25, 2006.

20. On or before January 10, 2006, Bhalla provided Khan with this highly confidential information, including the company's quarterly revenue figure, which significantly exceeded the consensus expectation of Wall Street analysts. Bhalla also informed Khan of an increase in Polycom's order backlog (i.e., orders that Polycom had received from its customers but for which it had not yet shipped any product and therefore had not recognized any revenues) and informed Khan that based on the current order backlog, he believed that Polycom would issue a strong revenue projection for its next quarter.

21. Khan traded based on the information provided by Bhalla by purchasing Polycom securities in Khan's personal account. On January 10, 2006, Khan purchased 3,000 Polycom call options to buy shares of Polycom at a strike price of \$17.50.<sup>1</sup>

22. On or about January 11, 2006, Khan spoke on the phone to Whitman and provided him with the material nonpublic information concerning Polycom's quarterly financial results that she had received from Bhalla, and also told Whitman that the information was nonpublic and from a source at Polycom. Between January 12 and January 24, 2006, Whitman Capital accumulated 132,263 shares of Polycom stock based on the information that Whitman obtained from Khan.

23. On January 25, 2006, shortly after the close of trading in the market, Polycom released financial results for its fourth quarter of 2005, which included higher-than-expected revenues and "record levels of backlog and deferred revenues." A short time later, during a conference call with analysts and investors, Polycom publicly projected revenue for the upcoming first quarter of 2006 of \$150-153 million, which exceeded Wall Street analysts' consensus estimate of \$146.9 million just prior to the call. The following day, Polycom stock opened at \$18.30 per share, an increase of almost 8% over the previous day's closing price of \$16.98 per share.

24. On January 27 and 30, following Polycom's earnings announcement, Khan sold her Polycom call options and generated approximately \$330,000 in illicit profits.

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<sup>1</sup> A call option is a financial contract between two parties that gives the buyer the right, but not the obligation, to buy an agreed quantity of stock during a specified time period for a specified price, known as the strike price. A buyer pays a fee, or premium, to purchase this right. A buyer of a call option generally stands to gain if the price of the stock increases.

25. On January 26 and 30, Whitman Capital liquidated its entire Polycom position for a profit of over \$360,000.

26. On at least one later occasion, in September 2008, Whitman asked Khan to contact Bhalla and secure additional inside information related to Polycom's earnings so the two could "short it." When Khan rebuffed Whitman, citing a fear of getting caught, Whitman suggested that she use "Skype" to avoid detection. Whitman later stated that he would stop speaking to Khan if she wasn't going to be a "slimeball" anymore.

### Insider Trading in Google Securities

27. In or about July 2007, Khan obtained material nonpublic information concerning Google's financial results for its second quarter of 2007, which were scheduled to be announced after the close of the markets on July 19, 2007. Khan obtained this information from her friend Hussain, who had access to inside information concerning Google's quarterly financial announcements as a result of Hussain's employment at Market Street Partners, a consulting firm that performed investor relations services for Google.

28. Earlier in 2007, Khan had provided Hussain with material nonpublic information that the computer software company Kronos Inc. ("Kronos") was about to be acquired by a private equity firm. Hussain purchased Kronos stock based on Khan's tip and reaped illicit profits after the Kronos acquisition was announced.

29. On or about July 10, 2007, Hussain repaid Khan for the Kronos tip by informing Khan that Google's earnings per share ("EPS") for its second quarter of 2007 would be about 25 cents lower than the company's first quarter EPS. This inside

information was in sharp contrast to the market's expectation that Google would announce a substantial increase in EPS for the second quarter of 2007.

30. After receiving the Google tip from Hussain, Khan began purchasing Google securities on the basis of this inside information. Between July 12, 2007 and July 19, 2007, Khan purchased 566 Google put option contracts to sell Google stock at a strike price of \$530 per share.<sup>2</sup>

31. On or about July 18, 2007, the day before Google's post market-close earnings announcement, Khan and Whitman spoke on the phone and Khan passed the material nonpublic information Khan received from Hussain about Google's quarterly results to Whitman. At Whitman's insistence, Khan identified her Google source as an employee of an investor relations firm used by Google.

32. On July 19, 2007, before the earnings announcement, Whitman arranged for Whitman Capital funds to purchase 2,761 Google put option contracts based on the tip from Khan.

33. After the markets closed on July 19, 2007, Google announced its financial results for the second quarter of 2007, reporting, among other things, EPS of \$2.93. As Hussain had previewed, Google's second quarter EPS figure was 25 cents lower than its EPS in the first quarter of 2007. The figure was also substantially lower than Wall Street analysts' consensus EPS expectation of approximately \$3.59. The day after the announcement, Google's share price fell from over \$548 per share at the close of trading on July 19 to less than \$520 per share at the close of trading the following day.

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<sup>2</sup> A put option is a financial contract between two parties that gives the buyer the right, but not the obligation, to sell an agreed quantity of stock during a specified time period at a specified price. As with a call option, a buyer pays a premium to purchase this right. A buyer of a put option generally stands to gain if the price of the stock decreases.

34. On the day after the Google announcement, Khan sold the put options she had acquired based on material nonpublic information for a profit of over \$500,000.

35. On July 20, Whitman Capital closed the put option positions it had established on July 19 and generated ill-gotten profits of over \$620,000. Afterwards, Whitman sent Khan a large floral arrangement to thank her for the tip.

36. In September 2008, Whitman implored Khan to reach out to Khan's Polycom source, Bhalla, to get additional earnings-related information concerning Polycom. When Khan refused to call Bhalla, indicating that Khan thought it would be wrong to ask Bhalla for material nonpublic information, Whitman replied mockingly, "Okay, Miss Google."

## **CLAIMS FOR RELIEF**

### **CLAIM I**

#### **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (Against Whitman and Whitman Capital)**

37. The Commission realleges and incorporates by reference paragraphs 1 through 36, as though fully set forth herein.

38. The information concerning (i) the Polycom January 25, 2006 earnings announcement, and (ii) the Google July 19, 2007 earnings announcement was, in each case, material and nonpublic. In addition, the information was, in each case, considered confidential by the companies that were the ultimate source of the information, and each of these companies had policies protecting confidential information.

39. Each of Bhalla and Hussain learned during the course of his/her employment the material nonpublic information each conveyed, and each knew,

recklessly disregarded, or should have known, that each, directly, indirectly or derivatively, owed a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, to keep the information confidential.

40. Each of Bhalla and Hussain tipped Khan material nonpublic information with the expectation of receiving a benefit.

41. Whitman knew, recklessly disregarded, or should have known, that the material nonpublic information he received from Khan was disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence.

42. Whitman is liable for the trading occurring at Whitman Capital because he effectuated the trades on behalf of Whitman Capital, controlled it, and/or unlawfully tipped the material nonpublic information to it.

43. By virtue of the foregoing, defendants Whitman and Whitman Capital, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon persons.

44. By virtue of the foregoing, Defendants, directly or indirectly, violated, and unless enjoined, will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**CLAIM II**  
**Violations of Section 17(a) of the Securities Act**  
**(Against Whitman and Whitman Capital)**

45. The Commission realleges and incorporates by reference paragraphs 1 through 44, as though fully set forth herein.

46. By virtue of the foregoing, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, defendants Whitman and Whitman Capital: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon a purchaser.

47. By reason of the conduct described above, Defendants Whitman and Whitman Capital each, directly or indirectly, violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**RELIEF SOUGHT**

**WHEREFORE**, the Commission respectfully requests that this Court enter a Final Judgment:

**I.**

Permanently restraining and enjoining defendants Whitman and Whitman Capital, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal

service or otherwise, and each of them, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

**II.**

Permanently restraining and enjoining defendants Whitman and Whitman Capital, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

**III.**

Ordering defendants Whitman and Whitman Capital, to disgorge, with prejudgment interest, all illicit trading profits, other ill-gotten gains received, and/or losses avoided as a result of the conduct alleged in this Complaint, including their own illicit trading profits, other ill-gotten gains, and/or losses avoided, and the illicit trading profits, other ill-gotten gains, and/or losses avoided of their direct and downstream tippees;

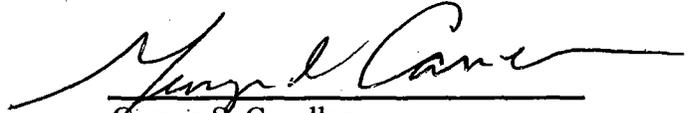
**IV.**

Ordering defendants Whitman and Whitman Capital to pay civil monetary penalties pursuant to Section 21(d)(3) and/or Section 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u-1], and Section 20(d) of the Securities Act [5 U.S.C. § 77t(d)];  
and

V.

Granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
February 10, 2012



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